

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only) CLERK 12-1020 BANKRUPTCY DISTRICT		
<b>PLAINTIFFS</b> Triangle Maintenance Service, LLC	<b>DEFENDANTS</b> Liberty Mutual Insurance Company			
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) William T. Cooper, MBN 9588 PO Box 1827 Columbus, MS 39703	<b>ATTORNEYS</b> (If Known)			
<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee			
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)  Breach of contract / failure to pay on bond				
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top; width: 50%;"> <b>FRBP 7001(1) – Recovery of Money/Property</b>  <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property  <input type="checkbox"/> 12-Recovery of money/property - §547 preference  <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer  <input checked="" type="checkbox"/> 14-Recovery of money/property - other    <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b>  <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property    <b>FRBP 7001(3) – Approval of Sale of Property</b>  <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)    <b>FRBP 7001(4) – Objection/Revocation of Discharge</b>  <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)    <b>FRBP 7001(5) – Revocation of Confirmation</b>  <input type="checkbox"/> 51-Revocation of confirmation    <b>FRBP 7001(6) – Dischargeability</b>  <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims  <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud  <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny            (continued next column)       </td> <td style="vertical-align: top; width: 50%;"> <b>FRBP 7001(6) – Dischargeability (continued)</b>  <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support  <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury  <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan  <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)  <input type="checkbox"/> 65-Dischargeability - other    <b>FRBP 7001(7) – Injunctive Relief</b>  <input type="checkbox"/> 71-Injunctive relief – imposition of stay  <input type="checkbox"/> 72-Injunctive relief – other    <b>FRBP 7001(8) Subordination of Claim or Interest</b>  <input type="checkbox"/> 81-Subordination of claim or interest    <b>FRBP 7001(9) Declaratory Judgment</b>  <input type="checkbox"/> 91-Declaratory judgment    <b>FRBP 7001(10) Determination of Removed Action</b>  <input type="checkbox"/> 01-Determination of removed claim or cause    <b>Other</b>  <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i>  <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)       </td> </tr> </table>			<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  (continued next column)	<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if a jury trial is demanded in complaint		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 Demand \$ 135,766.46		
Other Relief Sought				

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Triangle Maintenance Service, LLC		BANKRUPTCY CASE NO. 11-15142-DWH
DISTRICT IN WHICH CASE IS PENDING Northern District of Mississippi	DIVISION OFFICE Eastern	NAME OF JUDGE David W. Houston, III
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)  William J. Cooper		
DATE 2/17/12	PRINT NAME OF ATTORNEY (OR PLAINTIFF) William T. Cooper	

#### INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

FEB 17 PM 1:36

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISS  
J. M. Smith, DC

IN RE:

TRIANGLE MAINTENANCE SERVICE, LLC,

NO. 11-15142-DWH

DEBTOR

Receipt # 174419

\* \* \* \* \*

TRIANGLE MAINTENANCE SERVICE, LLC

PLAINTIFF

VERSUS

ADVERSARY NO. 12-1020

LIBERTY MUTUAL INSURANCE COMPANY

DEFENDANT

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**COMPLAINT**

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COMES NOW Triangle Maintenance Service, LLC ("Triangle Maintenance") and files this complaint against Liberty Mutual Insurance Company ("Defendant") and would show unto the Court the following:

**PARTIES**

1. Plaintiff, Triangle Maintenance, is a Mississippi limited liability company, doing business in Columbus, Lowndes County, Mississippi and is the debtor in the above styled Chapter 11 bankruptcy case.

2. Defendant, Liberty Mutual Insurance Company, is an insurance company licensed to do business in the State of Mississippi, whose principal place of business is 175 Berkley Street, Boston, Massachusetts 02116 and may be served with process on its agent for process, Corporation Service Company, 506 S. President Street, Jackson, Mississippi 39201.

### **JURISDICTION AND VENUE**

3. This is a core proceeding, and this Court has jurisdiction pursuant to, inter alia 28 U.S.C. §§1334 and 157.

4. This proceeding arises in, under, and is related to the above-entitled bankruptcy case. The debtor filed a petition for relief under Chapter 11 of the United States Bankruptcy Code on or about November 3, 2011.

### **FACTS**

5. Panola Construction Company ("Panola") entered into a contract with Hinds Community College ("Owner") for the construction of a multipurpose center at Hinds Community College in Pearl, Mississippi, said project generally identified as Multipurpose Center Hinds Community College Pearl, Mississippi (the "Project").

6. In accordance with Mississippi Code Annotated §31-5-53, Panola, as principal, and defendant, Liberty Mutual Insurance Company, as surety, executed a labor and material payment bond under which Liberty Mutual agreed to properly pay all persons supplying labor and material in the prosecution of the work required by the owner. The bond number is 83B0005726, a copy of the bond is attached as Exhibit A.

7. Triangle Maintenance and Panola entered into a subcontract effective July 6, 2009 in which Triangle Maintenance agreed to furnish all labor, materials, tools, equipment, facilities, supervision, management, financing, services, shop drawings, metals, testing, applicable permits, and every other thing of whatever nature necessary to fully perform and in every respect complete the work generally described as follows: Concrete curb and gutter, sidewalks, concrete pavement, decorative concrete sidewalks, as for the project known as Multipurpose Center Hinds Community College located at 3805 Highway 80 East, Pearl, Mississippi, 39208-4295; for the

owner, Hinds Community College; according to plans and specifications proposed by Dean & Dean/Associates hereinafter referred to as the Architect. See attached Exhibit B.

8. Pursuant to the subcontract, Triangle Maintenance performed its duties under the contract but was wrongfully terminated on February 18, 2011 by Jeffrey H. Papason, Vice President of Panola Construction.

9. As of this date, Triangle Maintenance is due \$135,766.46 in progress estimates and retainage.

10. The above-referenced project has been occupied and in use by the owner for approximately one (1) year and Panola has made absolutely no attempt whatsoever to resolve the outstanding debt.

11. The material and labor Triangle Maintenance supplied to Panola for the project is among the type of work and materials protected for payment by the labor and material payment bond.

13. Panola has failed to pay Triangle Maintenance what is owed. By letter, dated February 3, 2012, Triangle Maintenance put Liberty Mutual on notice of Panola's failure to pay and made a claim on the payment bond. Panola has failed to pay what is owed and is therefore liable for the total principal amount of \$135,766.46 in progress estimates and retainage, plus pre-judgment interest from the due date of each unpaid invoice. The Proof of Claim and supporting documents are attached hereto as Exhibit C.

14. Additionally, the owner has paid Panola for part or all of the materials and labor provided by Triangle Maintenance and incorporated into the project. Pursuant to Mississippi Code Annotated §31-5-27, Triangle Maintenance is entitled to recover a penalty in the amount of one-half (1/2) of one percent (1%) per day of the delinquency, calculated from fifteen (15) days

after payment was made by the Owner to Panola, not to exceed fifteen percent (15%) of the amount due. Triangle Maintenance is entitled to a judgment against Liberty Mutual for the penalty provided by Mississippi Code Annotated §31-5-27.

15. Pursuant to the terms of the agreement with Panola, defendant is further liable to Triangle Maintenance for reasonable attorney fees, collection costs, and court costs, with attorney fees to be set by the Court upon entry of judgment in amount not less than thirty-three percent (33%) of the account balance (including principal and interest).

16. Alternatively, defendant's refusal to pay triangle Maintenance in a timely manner is unreasonable and solely for the purpose of delaying payment to Triangle Maintenance. Accordingly, Triangle Maintenance is entitled to recovery of its attorney fees pursuant to Mississippi Code Annotate §31-5-57.

17. Triangle Maintenance has complied with all conditions precedent to the pursuit of its claim and has timely filed this Complaint.


#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, plaintiff, Triangle Maintenance Service, LLC, prays that this complaint will be received and filed, that a summons will be issued for defendant, Liberty Mutual Insurance Company, and, upon a hearing, the Court will grant the following relief to Triangle Maintenance:

A. Award Triangle Maintenance a monetary judgment against defendant in the principal amount of \$135,766.46, plus pre-judgment interest, plus penalties pursuant to Mississippi Code Annotated §31-5-27, plus reasonable attorney fees to be set by the Court in an amount not less than thirty-three percent (33%) of said account balance, plus court costs, plus interest on said total judgment from and after the date it is entered, at the legal rate.

B. All such other general and further relief to which Triangle Maintenance may be entitled.

This the 17<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
WILLIAM T. COOPER, MBN 9588  
Attorney for Triangle Maintenance Service

OF COUNSEL:

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